

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

FRANK BATES WHITEHEAD, III,)	
)	
Plaintiff,)	
)	
vs.)	NO. CIV-23-1151-HE
)	
OFFICER COLT LOWRY, ELK CITY)	
PD, et al.,)	
)	
Defendants.)	

ORDER


Plaintiff Frank Bates Whitehead, III brought this action alleging various violations of federal and state law. Pursuant to 28 U.S.C. § 636(b)(1)(B),(C), the matter was referred to Magistrate Judge Shon T. Erwin for initial proceedings. On May 9, 2024, Judge Erwin issued a Report and Recommendation recommending the court: (1) dismiss plaintiff's requests for declaratory and injunctive relief, (2) dismiss plaintiff's conspiracy claim, (3) dismiss the official capacity claims for monetary damages against both defendants, (4) dismiss the individual capacity claims for monetary damages against defendant Marsee, (5) dismiss the Fourth Amendment individual capacity claim against defendant Lowry based on false arrest, (6) dismiss the Fifth Amendment individual capacity claim against defendant Lowry, (7) dismiss the state law claim for false imprisonment against defendant Lowry, and (8) conclude that plaintiff has stated a claim for excessive force under the Fourth Amendment, against defendant Lowry, in his individual capacity, limited to the recovery of monetary damages. Plaintiff was advised of his right to object to the Report and Recommendation by May 28, 2024. No objection has been filed. Plaintiff has

therefore waived his right to appellate review of the factual and legal issues addressed in the report. Cassanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010).

Accordingly, the court **ADOPTS** the Report and Recommendation [Doc. #15] and **DISMISSES** (1) plaintiff's requests for declaratory and injunctive relief, (2) plaintiff's conspiracy claim, (3) the official capacity claims for monetary damages against both defendants, (4) the individual capacity claims for monetary damages against defendant Marsee, (5) the Fourth Amendment individual capacity claim against defendant Lowry based on false arrest, (6) the Fifth Amendment individual capacity claim against defendant Lowry, and (7) the state law claim for false imprisonment against defendant Lowry. The Fourth Amendment individual capacity claim for excessive force against defendant Lowry remains for resolution.

IT IS SO ORDERED.

Dated this 25th day of June, 2024.



JOE HEATON
UNITED STATES DISTRICT JUDGE